Supreme Court, U.S.
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No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1999

IN THE MATTER OF CHARLES HAROLD KAVALARIS ON DISCIPLINE

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE THE SUPREME COURT OF CALIFORNIA

CHARLES H. KAVALARIS
425 East Santa Clara Street
Suite 150
San Jose, CA 95113

1-408-295-9796

Petitioner Attorney ***Pro Se***

37PP

QUESTIONS PRESENTED

1. Is an ex parte suspension of an attorney by a State Bar employee a violation of fundamental due process of law?

2. Is a suspension based on punishing a recovering alcoholic for his disease a denial of the equal protection of the law?

3. May probation violations be found, consistent with due process of law, when there was no court hearing imposing them, when the court order did not contain the claimed conditions, and when the conditions were never served on the attorney?

LIST OF PARTIES

The parties are as follows:

CHARLES H. KAVALARIS
425 East Santa Clara Street
Suite 150
San Jose, CA 95113

1-408-295-9796

Petitioner Attorney ***Pro Se***

MARIE M. MOFFAT
RICHARD J. ZANASSI
THE STATE BAR OF CALIFORNIA
180 Howard Street
San Francisco, CA 94105

1-415-528-2000

Attorneys for Respondent State Bar of California
and State Bar Court of the State Bar of California

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Petitioner Attorney respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of California, docket no. S081332 entered on December 15, 1999. Appendix A.

This Petition is filed to address the issues of whether the United States Constitution requires that an attorney be afforded the right to be a hearing prior to a taking of his license to practice law, whether an employee of a State Bar may take an attorney's

license, whether probation violations may be premised on no actual notice to the attorney of the probation conditions, and whether an attorney should be punished by way of a denial of the equal protection of the law if he suffered at the time of claimed misconduct with the disease of alcoholism.

Unless otherwise indicated, "Sections" refers to sections of the California Business and Professions Code.

I.

ORDERS BELOW

The summary judgment of the California Supreme Court reproduced at Appendix A. The recommendation of the hearing judge of the State Bar Court of the State Bar of California is reproduced at Appendix B.

II.

JURISDICTION

The jurisdiction of this Court is involved under 27 U.S.C.A. s. 1257(3). This Petition for writ of certiorari is timely filed within ninety days of the order of the Supreme Court of

California on December 15, 1999. Appendix A.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment XIV: "No State shall .... deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Constitution

Art. 6, sec.1: "The judicial power of the State is vested in the California Supreme Court, the Courts of Appeal, the Superior Courts, and the Municipal Courts."

Art. 6, sec. 9: "The State Bar of California is a public corporation...."

State Statutes:

The state statutes at issue are California Business and Professions Code section 6079.1, 6079.5, 6086.5, 6086.10, and 6086.65(a) and California Rules of Court Rule 951(b). They are

set forth at Appendix E.

IV.

STATEMENT OF THE CASE

The California Supreme Court created with the State Bar of California, pursuant to statute, a State Bar Court of the State Bar of California, to handle attorney disciplinary matters.

Pursuant to state statute, the California Supreme Court appoints and has appointed ten employees to the State Bar of California to be its judges. It also removes or reappoints these judges. The California Supreme Court's appointees are paid their mandated salaries and benefits from the available private revenues of the State Bar of California.

The State Bar of California has been verging on bankruptcy for over two years.[1] It received limited funding by

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[1] Due to the fact the State Bar of California is a legislative creation, in October, 1997 the Governor of the State vetoed the bill authorizing it to collect mandatory dues in excess of $77.00 per compelled attorney member. "Future of the State Bar Back Where it Started in 1927," by Kathleen O. Beitiks, California Bar Journal, January, 1998, at 1. As stated on June 29, 1998, on page one of the Los Angeles Daily Journal, in an article entitled, "Bar Employees Pack It In as Shutdown Deadline Arrives," by Don DeBenedictis, "More than 400 employees of the State Bar of

order of the California Supreme Court when the State legislature refused to approve a dues bill. It receives additional funds by finding accused attorneys culpable of misconduct warranting the imposition of public discipline and assessing enhanced administrative costs on each accused attorney, so as to pay the salaries and benefits of its judges, prosecutors, and investigators.[2] It is the prosecuting party in disciplinary proceedings. The appointed judges are employed, housed, trained, paid and

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California spent Friday morning packing up their personal belongings and collecting their final paychecks....About 180 bar employees will be on the job this week, out of a one-time high of about 750."

2 In response to its financial crisis, the Board of Governors increased the costs it imposes on publically disciplined attorneys instead of cutting costs. As stated in "Bar Governors End Meeting Without Cutting Costs," Los Angeles Daily Journal, February 10, 1998, page 3, by Don J. DeBenedictis, "A divided State Bar Board of Governors... approved several proposals aimed at increasing the amount of prosecution costs the bar recovers from the lawyers it disciplines. What they did not do was propose any ideas to trim the bar's crisis-imperiled budget... " As stated in the April, 1998 issue of The California Lawyer, "Attorneys disciplined in the future will be assessed costs according to a revised formula which has been updated to reflect the bar's current expenses... The revisions expand the bar's ability to recover disciplinary costs, in addition to updating the cost-assessment formula." "New Formula to assess discipline costs, collect additional fees." The California Lawyer, April, 1998.

provided their salaries, facilities, and benefits by the State Bar of California and from its private funds. Those funds include the assessments they make upon finding attorneys guilty of professional misconduct. The judges and prosecutors are co-employees who are housed, trained, paid and provided their benefits from the same privately financed employer which is the financial beneficiary of findings of guilt of accused attorneys. California Business and Professions Code sections 6086.10, 6086.5, 6086.65. Exhibit E.

For the years 1989-1995, the California Supreme Court appointed fifteen employees to the State Bar. Their appointees are denominated judges of the State Bar's Court. There are six hearing judges. The hearing judges are required to be paid $98,070.00 a year. There are three review department judges. Two are lawyers and one is a non-lawyer. The Presiding Judge of the Review Department is required to be paid a base salary of a Superior Court judge- $107,390. The Review Department part-time attorney judge and its non-lawyer judge receive

$53,695.00 a year.

Since its appointment of employees to the State Bar in 1989, the California Supreme Court has declined to grant review to any accused attorneys. Refer Exhibit A. Its appointees to the State Bar prepare the California Supreme Court's summary order. This summary order for the signature of the Chief Justice of the California Supreme Court is prepared and sent with the appointees' transmittal to the California Supreme Court of its recommendation as to discipline. As in this case, any petition and motion submitted by the accused attorney to the California Supreme Court is not addressed. The summary order is already prepared for signature before the accused attorney files anything. The filings of the accused attorney are ignored and never addressed. Exhibit A to Appendix.

The petitioner is an attorney at law for thirty years. Exhibit C-1. For twenty seven of those thirty years, he had no disciplinary record. Exhibit C-7. The attorney is an alcoholic. Exhibit C-16. During the years of 1985 through 1991, the

attorney and his former law partner paid to a Teamsters' official a portion of their legal fees for the referral of business to them.

In 1992 the attorney did not return a client's phone call or respond to the client's letter. In 1991 and 1994 the attorney did not report to the State Bar a sanctions order. In 1991 he was one month late in paying a sanction order and he paid the sanction order to the wrong party. In 1993 the attorney was late in withdrawing from employment in a client's case. There was no prejudice to the client. In 1995 the attorney was convicted of driving under the influence of alcohol.[3] While the above acts

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The findings appear at C-10, footnote 2, as follows: "Beginning in August 1992, Mr. Barba left phone messages for respondent to call him back. By letter dated October 27, 1992, Mr. Barba requested in writing a status report on his case. Respondent failed to respond to these communications." (Ex. C-18; SB Ex. 4-0018) The attorney was ordered to pay $2,000.00 sanctions or $1,000 to the County and $1,000 to a Dr. Levin by June 30, 1991. In July of 1991 he paid $2,000 to the County. Three years later Dr. Levin demanded $1,000. "Respondent reasonably believed that his obligation to Dr. Levin had been met by his previous payment to the County... [He] promptly paid Dr. Levin...Respondent wilfully violated section 6068(b) and 6103 in that he failed to promptly pay the court-ordered sanctions." Ex.C-20; SB Ex. 4-0020). Respondent failed to report the sanctions. "He reasonably believed that the sanctions had been reported to the State Bar because he received a copy of the referral letter from the Superior Court to the State Bar..Respondent wilfully violated..section 6068(o) by failing to report the court-ordered sanctions to the State Bar." Ex.C-23; SB Ex. 4-0023). "In June of 1993, respondent requested permission

were admittedly committed while the attorney was suffering from his disease of alcoholism, the State Bar of California did not combine these acts into one proceeding as required, even though it was requested to do so. Exhibit C-8.

For the acts that were not fee-splitting, the State Bar prepared the summary order imposing a stayed suspension of six months and two years of probation. At that time in 1997, the attorney undertook zealous recovery from his disease of alcoholism.[4] The attorney has been clean and sober for three

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of his client to withdraw...when that permission was denied, [he] petitioned the court for permission to withdraw... [A]rbitration dates were pending. By failing to request permission of his client, or alternatively by failing to request permission of the court, prior to June, 1993 respondent violated Rule.... 3-700(A)(2)." Exhibit C-25:23-28, 26; State Bar Exhibit 4-0025-26.) Respondent failed to report $1,075.00 in sanctions. At the time, [the client] had already complained to the State Bar. Exhibit C-28; State Bar Exhibit 4-0028). Respondent was convicted of driving under the influence of alcohol in 1995 with a prior conviction. Exhibit C-30-31; State Bar Exhibit 4-0035-36).

4 As set forth in C-10, the attorney provided a current address and a current telephone number at which he could be can be reached and respond within twelve (12) hours. The attorney agreed to abstain from the use of any alcoholic beverages and not possess any narcotics, dangerous, or restricted drugs, or associated paraphernalia except with a valid prescription. The attorney enrolled in and provided proof of enrollment in a program of substance abuse recovery and provided satisfactory evidence of his

years since March of 1997. The attorney is committed to his program. The California Supreme Court's order contained no probation conditions. Exhibit C-11. It said it was subject to the conditions of probation as recommended by the Hearing Department of the State Bar Court in its Order. However, that order was not served on the attorney. It was solely served on his attorney of record. Since there was no court appearance, no hearing, no recitation to the attorney of any probation conditions, no probation monitor or officer assigned, no meeting to go over any conditions or terms, and the order containing the claimed probation conditions was never served on the attorney, the attorney had no personal knowledge of any probation conditions. Exhibit C-11.

As a result of no service on the attorney of any probation conditions, the State Bar had the California Supreme Court enter a second order suspending the attorney from the practice of law

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compliance of the program with each report he filed. He agreed to random drug testing with 12 hours notice. He agreed to waive medical confidentiality.

for sixty days for claimed probation violations. Those claimed violations were being late in attending the State Bar's Ethics School and filing one quarterly report late. Exhibit C-15.

The first order of the California Supreme Court stated that the attorney was required to take and pass the Multistate Professional Responsibility Examination within one year. This examination is given only three times a year. The State Bar does not advise attorneys of this nor how to enroll in the exam. Exhibit C-46. When the attorney failed the exam, he received a one-page order from a State Bar employee in its "Court" purporting to ex parte take the attorney's license indefinitely and until the attorney provided proof of his passage of the exam. Exhibit D. The attorney filed a motion with the State Bar's "Court" before the ex parte suspension was to start. Exhibit B-8. He requested an extension of time to take the exam and a stay of the suspension. It never acted for over a month. It then denied the motion as moot as the attorney had not passed the most recent exam. Exhibit B-9. The attorney missed passing by two

points. The attorney filed a second motion for a stay of the suspension, since it would be another five months before the attorney could take the exam again and provide proof of passage. Exhibit B-9.

After a month, this motion was denied for a claimed "lack of good cause." Exhibit B-9. The attorney was actually suspended ex parte by one State Bar employee for over ten months destroying his thirty year business, career, clients, good will, ability to earn a living, and for being two points short on an exam that is based on the ABA Model Code when California rejects the ABA Model Code and uses one hundred and twenty three year old obsolete statutes instead. Exhibit C-45-C-56.

When the attorney resumed the practice of law, the same fee-splitting matter that was pending in 1996 which he had sought to consolidate with the original proceeding and which the State Bar refused to consolidate, was now brought as a new charge. Exhibit B-12-B-13. Added to that charge was a new charge that the attorney had engaged in the unauthorized practice of law

constituting nine separate violations of different statues by appearing at an arbitration and making a court appearance while his motion for a stay of the ex parte suspension was pending and in thereafter while his second motion for a stay was pending settling a case and appearing at another arbitration. Exhibit B-8-B-9. Also added were new charges that two checks from his trust account three years earlier were initially returned unpaid for insufficient funds, and when the attorney tried to correct the accounting error by depositing his own funds into his trust account, he was guilty of commingling funds and trust violations. Exhibit B-7.

The State Bar was then in desperate financial straits. It had been closed down for two years by the veto of the Governor and the failure of the legislature to provide it with dues. It needed money. Its judge issued a recommendation that the attorney be actually suspended for a year for his acts of moral turpitude. She provided the attorney with no weight, and her own cynicism, about the attorney's three year period of sustained

recovery from alcoholism. She did not, as required by law, credit the attorney with his absence of subsequent complaints, his long history of no prior record, the attorney's objective steps demonstrating remorse, the passage of considerable time since the acts occurred, the excessive delay in conducting the proceeding, and the lack of harm to any clients. She ignored the lack of notice of probation conditions and the unconstitutionality of a claim to unauthorized practice of law based on an ex parte order from a State Bar employee.

The California Supreme Court summarily, as it has done in all attorney's cases for nine years, denied the attorney's Petition for a Writ of Review. No grounds, no discussion, and no merits are mentioned. It signed the order prepared for its signature by the State Bar.

Thousands of California attorneys have been summarily disbarred by the claims that an employee of the State Bar takes an attorney's license to practice law ex parte or that unknown and unserved probation conditions were violated. The California

Supreme Court has delegated its judicial power to license the state's 150,000 attorneys to one person in a State Bar. There is no required notice, hearing, findings, nor an objective and impartial hearing person. The State Bar needs money. Its judges need money. If every accused is not automatically found guilty, they do not have the money to be paid. There is no exercise of a reasoned discretion. Everything from an accused attorney is automatically denied.

This Petition is presented to address the serious issues of an attorney licensing system wherein the State Supreme Court has delegated its judicial power in the licensing of a State's lawyer to a private employee of a financially-interested State Bar.

The absence of notice of probation conditions, of notice and an opportunity to appear and defend and of a hearing prior to the taking of a license to practice law for ten months, and the lack of a fair hearing procedure are issues which this Honorable Court should address as well as the disparate and discriminatory treatment accorded to California lawyers who suffer from the

disease of alcoholism whereby eight mitigating factors were totally ignored in this attorney's case. Exhibit C-16-C-46.

V. REASONS FOR GRANTING THE WRIT

A.

Unlawful Practice Requires a Licensing Court Order

Critical to the summary judgment of the California Supreme Court suspending the attorney for one year are the claimed eight violations consisting of a claim that the attorney engaged in the unauthorized practice of law when he made a court appearance, appeared at two arbitrations, and settled a case during the period of time that an employee of the State Bar sent a one-page ex parte order suspending the attorney. The order at issue is attached hereto as Exhibit D.

This Honorable Court held in **United States v. Raddatz**, 447 U.S. 667, 65 L. Ed.2d 424, 100 S. Ct. 2406 (1980) that judges may not abdicate their judicial duties and powers to non-judicial persons without violating basic due process of law. The refusal of the California Supreme Court to perform its judicial

duties concerning the licensing of the State's court officers has caused it to be the subject of criticism, derision, and disrespect within the State.

"Chief Justice (of the California Supreme Court) Ron George has consistently opposed the idea of transferring the regulation of the legal profession to an already overburdened AOC. (Administrative Office of the Courts)."[5] "[O]ne staunch bar opponent, Sen. Quentin Kopp, I-San Francisco, was unimpressed with the offer of George's services. It would be inappropriate for the chief justice to intervene in a legislative matter, just as it would be for the Legislature to intervene in a pending court case, he said. Kopp had introduced a bill to abolish the State Bar and turn its core functions over to the Supreme Court and the Administrative Office of the Courts, but George had resisted the idea. **"So I'm not interested in the chief justice's offer because he's already indicated the court's**

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5 "The Kopp bill should be defeated," by Jeffrey Tidus, California Bar Journal, March, 1998.

unwillingness to assume its rightful function." (emphasis added).[6]

The ex parte order of the State Bar employee purporting to take the attorney's license for not passing the exam in one year is premised on the validity of a California Rule of Court. That rule provides that, "Rule 951 (b) Professional Responsibility Examination. The State Bar Court shall have the power to extend the time within which a member of the State Bar must take and pass a professional responsibility examination, to suspend a member for failing to take and pass such examination, and to vacate a member's suspension for failing to take and pass such examination." Since there are no notice, hearing, findings, or judge requirements to the rule, none are provided to an attorney. The taking is without notice, hearing, judge, findings, and is arbitrary and capricious. Stays are always denied, no matter how sufficient are the facts indicating good cause. The

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"Let George End Bar Crisis, Says Supreme Court, " by Don J. DeBenedictis, Los Angeles Daily Journal, June 25, 1998, page 1.

attorney, in fact, had good cause for a stay. Exhibit C-49.

Petitioner stated in his Petition to the California Supreme Court why this Rule of Court violated not only state constitutional and statutory law, but also why it violated the United States Constitution as the unlawful delegation of judicial power to a private person, as follows:

"Petitioner posits that that portion of California Rules of Court, Rule 951 (b) which purports to authorize the State Bar of California to suspend attorneys for not taking and passing the professional responsibility examination is unconstitutional as it unlawfully delegates this Honorable Court's judicial power to a private person with no supervision, no oversight, no monitoring, no controls, and no standards set forth in derogation of the fifth and fourteenth amendments's due process and equal protection clauses to the United States Constitution." Exhibit C-54.[7]

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7 As stated by this Honorable Court in **Keller v. State Bar of California,** 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed 2d. 1 (1990), overruling 255 Cal. Rptr. 542 (1989), at 13: "The State Bar of California was created, not to participate in the general government of the State, but to provide specialized professional advice to those with the ultimate responsibility of

This Honorable Court in **Ex Parte Robinson** (1873) 86 U.S. 505; 22 L. Ed. 205; 19 Wall. 505, at 511 held that a court which did not admit the attorney had no power to disbar or suspend him. This Court stated that, "This power (to suspend or disbar) is possessed by all courts which have authority to admit attorneys to practice." The State Bar and its claimed Court have no authority to admit an attorney to the practice of law. California Business and Professions Code sections 6000 et. seq.

The United States Supreme Constitution states that, "This Constitution and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound thereby; and anything in the constitution or laws of any state to the contrary notwithstanding." Article VI, clause 2, United States Constitution. This Honorable Court should enforce the supremacy clause and hold that California Rules of Court, Rule 951 (B) authorizing an employee of a State Bar to suspend an

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governing the legal profession."

attorney is the unlawful delegation of judicial power to a private person with no standards, no guidelines, and no due process protections of notice, hearing, and an opportunity to appear and defend.

B.

A Claim of a Probation Violation when there was no Service of Probation Conditions Denies Due Process of Law

The judgment suspending the attorney for one year rests on a prior record of violating probation conditions of being late in attending a State Bar Ethics School and being late in filing one quarterly report.

The lack of actual notice of the probation conditions imposed on an attorney is a serious due process problem in the State Bar system and appears to be unconstitutional. A probationer is entitled to actual notice of each probation condition provided to him by a judge in open court, a probation officer, and a meeting with a probation officer explaining each probation condition and how to comply before said probation

conditions are enforceable. As held in **Pollard v. United States** 352 U.S. 354; 77 S. Ct. 481; 1 L. Ed.2d 393 (1957), the absence of an accused from the courtroom when probation is imposed invalidates the judgment and probation order. Fed. Rules Crim. Proc., 43.[8] Exhibit C-9-C-11.

Since the attorney was never present when probation terms were first recommended and then imposed and the California Supreme Court order does not set forth the probation terms , the claim that a prior history of a probation violation should be treated as an aggravating factor is unlawful and excessive. The claimed probation terms were not valid, having been entered in the absence of the accused attorney and never served on him.

It denies due process and the equal protection of the law

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[8] Attorney disciplinary proceedings are quasi-criminal in nature. **In re: Ruffalo** 390 U.S. 544, 551, 88 S. Ct. 1222, 1226, 20 L. Ed. 2d. 117 (1968). Probation is a criminal disposition subject to the due process rights of a criminal proceeding. A defendant is constitutionally "guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure." **Kentucky v. Stincer**, 482 U.S. 730, 745, 96 L. Ed. 2d 631, 107 S. Ct. 2658 (1987).

to claim that the California Supreme Court order may suspend an attorney for a year after it imposes unknown probation terms which are never served on the attorney.

C.

There was No Fair Hearing Procedure

The Petition for a Writ of Review presented to the California Supreme Court makes clear that the attorney was denied a fair procedure and hearing. The State Bar's judge refused to consider, as did the California Supreme Court, that an additional one year suspension, when the attorney had already suffered an unlawful sixty days suspension premised on unnoticed and unserved probation conditions and then a ten month suspension based on an ex parte order of a State Bar employee for failing an exam by two points, was not based on existing law. Both prior suspensions were unconstitutional. They were not based on notice, a hearing, or a fair procedure.

The following factors in mitigation of the one year actual suspension were also ignored or discounted: the extensive record

of rehabilitation for three years from the disease of alcoholism, the absence of a prior record for over fifteen years, the absence of any subsequent complaints, the objective steps taken by the attorney to demonstrate his remorse and his recognition of his wrongdoing, the passage of considerable time followed by convincing proof of rehabilitation, the excessive delay in conducting the proceedings, and the lack of harm to any clients. Refer Exhibit C-16-C-46.

The threshold prerequisite to an equal protection claim, however, is unequal treatment of persons who are similarly situated." (**People v. Jerex** (1989) 208 Cal. App. 3d. 132, 138-139). "The Equal Protection clause imposes a requirement of some rationality in the nature of the class singled out." **James v. Strange** 407 U.S. 128, 140 (1972), quoting **Rinaldi** 384 U.S., at 308-309, and that rationality is absent here..... giving preference to a discrete class merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection

Clause. **Reed v. Reed** 404 U.S. 71, 76 (1971)." **Logan v. Zimmerman Brush Co.** 445 U.S. 442, at 442 (J. Blackmun concurring). Since all other accused attorneys are entitled to mitigating weight concerning the recommended discipline for each of the above eight factors, all of which were readily apparent from the record, as set forth at Exhibit C-16-C-46, why was this attorney signaled out for disparate and discriminatory treatment in violation of the equal protection of the law?

There is no doubt that the State Bar of California officials and staff discriminate against those attorneys who are alcoholics. They have no recovery programs. They have no peer counseling. They have no AA or alcohol experts who will associate with them. When they set up pilot alcohol programs, the programs failed. They were terminated. The experts refused to participate in a program where reporting an attorney's failure or "going off the wagon" to the State Bar of California's disciplinary system was required.

The State Bar of California is in the money-making

business. They do not make money if attorneys recover or are rehabilitated. They only make money for themselves by making sure that attorneys fail in recovery and rehabilitation. Their interest is in making an attorney fail. An attorney's success deprives them of money.

Hundreds of petty, trivial, minor, unconstitutional, no notice, no hearing charges are brought to harass an attorney into stipulating to culpability so that they get about $6,000.00 for each proceeding for themselves.

Because of raising these issues, this attorney has now been threatened with disbarment by the State Bar judge. Her decision states, that, "The Respondent is warned that this is in every respect his last chance to retain his license to practice law. If he commits any violation of the terms of his probation, or again practices law while on actual suspension from practice, the inevitable result will be his disbarment." Exhibit C-22. If the attorney has no notice of any probation conditions or if another State Bar employee whips out another ex parte order suspending

this attorney, this attorney's thirty years of devotion to the law will be destroyed.

This Honorable Court should entertain this Petition so that other recovering alcoholics who are attorneys in the State of California are not destroyed by these unfair proceedings, biases, prejudices, and are encouraged to maintain their sobriety and dedication to the law. It is shame that contributes to alcoholism. It is shameful that attorney disciplinary proceedings in the State of California encourage alcoholism, rather than assisting attorneys with their painful process of recovery.[9]

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9 "The AMA finally 'voted' alcoholism a disease in 1956. Yet even here the disease concept was seriously compromised. for the main body of the medical profession continued to view alcoholism as a self inflicted symptom of an underlying psychological inadequacy and relegated treatment of the disease to the psychiatric branch where it still languishes... [S]tudents of the disease have tried to have it both ways, proclaiming loudly that alcoholism is a treatable disease and at the same time continuing to affix the blame and stigma for contracting the disease on the unwitting victim.. Both scientists and treatment professionals striving to advance the disease concept of alcoholism defeat their own aims by... condoning the belief that alcoholism is caused by heavy drinking, which in turn, is caused by defects in the drinker's psychology, social and cultural fabric. This is the belief that keeps alive the age old myths and misconceptions and the stigma, shame, and contempt for the alcoholic that continue to cloud the field of alcoholism." Milam, James and Kechan, Katherine, Under the Influence, Bantam Books, 1981, at page 142.

The problem is a nation-wide one, of substantial significance to all attorneys in the United States, and an important issue for this Honorable Court to now address.[10] While the Model Recovery Program of the ABA recognizes alcoholism as a disease, California has no such program nor recognition and blames the attorney instead in violation of the equal protection of the law. Exhibit C-16-C-28.[11]

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The American Bar Association's Commission on Lawyers Assistance Program stated that, "Alcoholism, drug addiction, and mental health problems are afflictions that affect a great number of professionals including lawyers and judges. Reports now estimate that while ten percent of the general population has problems with alcohol abuse, anywhere from fifteen to eighteen percent of the lawyer population battles the same problem. Because lawyers and judges are over achievers who carry an enormous workload, the tendency to 'escape' from daily problems through the use of drugs and alcohol is prevalent in the legal community. Also, the daily pressures placed on these men and women can lead to inordinate amounts of stress and mental illness. Recent reports have also shown that a majority of disciplinary problems involve chemical dependency or emotional stress."

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"Addiction is a physical disease. It is properly classified with cancer, heart disease and diabetes as chronic illness... alcoholics have physical conditions that have caused them to be susceptible to the disease.... The work of Dr. E.M. Jelinek led to the acceptance of alcoholism as a disease by the AMA, the AMSA, the National Council of Alcoholism, the American Psychiatric Association, American Public Health Association, American Hospital Association and the World Health Organization. Even among those who have accepted alcoholism as a disease, there has been a common

Conclusion

This Petition requests this Honorable Court address the due process and equal protection problems inherent in a State's disciplinary system where the State Supreme Court has delegated its licensing duties and functions to a private person in a financially interested State Bar, where probation violations are found when there is no notice to the attorney of the probation conditions, where an employee of a State Bar takes licenses ex parte indefinitely, and where an accused attorney is given no credit for his thirty year career, his rehabilitation, and his commitment to his sobriety because he questions the constitutionality of these procedures.

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belief that its primary cause is psychological. Dr. James Milain has made a major contribution to the recognition of alcoholism as a primary physical disease. Dr, Milain has asserted that psychology and social factors play no stronger role in alcoholism than in any other chronic disease.... [He] presented the view that the body of a person who becomes addicted to alcohol does not react to alcohol in the same way as a person who does not become addicted. Research in recent years strongly supports this position. the research of Charles Leiber..., Marc Schuckit... and others indicates that some people are born with a body more susceptible to addiction than other people." Gorski, Terence T. and Miller, Merlen, Staying Sober, Herald House, Independent Press, 1986, at 34.

For the foregoing, the Petition for Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

Dated: March 9, 2000

CHARLES H. KAVALARIS
Petitioner Attorney ***Pro Se***

Verification

I have read the foregoing Petition for Writ of Certiorari to the Supreme Court of California and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 9th day of March, 2000 at San Jose, California.

Dated: March 9, 2000

CHARLES H. KAVALARIS
Petitioner Attorney *Pro Se*